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10/667,809	09/22/2003	Thomas F. Adams		1438

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EXAMINER

MAHAFKEY, KELLY J

ART UNIT PAPER NUMBER

1761

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/667,809	Applicant(s) ADAMS, THOMAS F.	
	Examiner Kelly Mahafkey	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to communications filed 19 December 2005.

Claims 12-21 are pending.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 12 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Zonca (US 6637721 B1). See Office Action Mailed 10/06/05.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- Determining the scope and contents of the prior art.
- Ascertaining the differences between the prior art and the claims at issue.
- Resolving the level of ordinary skill in the pertinent art.
- Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zonca as applied to claims 12 and 13 above, and further in view of Lalonde (US 4222547).

7. Zonca teaches of a tray with lateral compartments for creating narrow pieces of small girthed ice articles for openings on portable beverage containers. In Figure 1 Zonca teaches that the lateral compartments are downwardly formed. Zonca teaches that the ice tray has a raised rim integrally formed with said tray table at said perimeter as recited in claim 15. Refer specifically to Figure 1 (14).

8. The difference between the reference and the claim is that the reference is silent to an overflow channel formed in an ice tray for providing a path for self-leveling water as recited in claim 14.

9. Lalonde teaches of an ice tray with notched channels (i.e. overflow channels) for providing a path for self-leveling water. Refer specifically to Abstract, Figure 1, and Column 3 lines 44-47. It would have been obvious to one skilled in the art at the time the invention was made to include overflow channels for providing a path for self-leveling water in view of Lalonde in the ice tray as disclosed by Zonca. One would have

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been motivated to do so in order to gain the benefits of overflow channels for providing a path for self-leveling water, such as to assure equalization upon filling. Because both deal with ice trays, one would have a reasonable expectation of success from the combination.

10. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zonca and in view of Lalonde as applied to claims 12-15 above, and in view of Copeman (US 2113014).

11. Zonca teaches of a tray with lateral compartments for creating narrow pieces of small girthed ice articles for openings on portable beverage containers as described above, the difference between the references and the claim is that the reference is silent to a chute providing a channel for receiving small girthed ice articles formed in lateral compartments and to a portal for the ice articles to exit the tray.

12. Copeman discloses of an apparatus for handling ice cubes in which includes a tray, chute, and portal design for forming and removing the ice cubes into a storage area. Refer specifically to Column 2 lines 35-36 and Column 3 lines 44-46.

13. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the process of creating a tray as taught by modified Zonca, to include the a chute and portal for the removal of the ice cubes as taught by Copeman. One would have been motivated to do so in order to take advantage of the benefits of a chute and portal, such as ease of removal of a product

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from the tray. Because both items deal with the trays that can be utilized to create ice, one would have a reasonable expectation of success from the combination.

14. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zonca and in view of Lalonde as applied to claims 12-15 above, and further in view of Asenbauer (US 3327896).

15. Zonca teaches of a tray with lateral compartments for creating narrow pieces of small girthed ice articles for openings on portable beverage containers as described above, however, although the reference teaches of stacking and a raised rim, the reference is silent to a rim that is raised to a second height.

16. Asenbauer discloses of a tray with a rim portion that has a first raised height and a second raised height in the in the rear portion, which extends higher than the first raised height. Asenbauer teaches that the tray comprises a perimeter base, which is connected to the rim and projects downwardly so that plurality of trays are stackable. Refer specifically to Figures 1-3 and Column 1, paragraph 1.

17. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the process of creating a tray as taught by modified Zonca, to included a raised rim with a second raised rim in the rear as taught by Asenbauer. One would have been motivated to do so in order to take advantage of the benefits of a raised rim with a second raised rim in the rear, such as the ability to stack. Because both items deal with the trays and the process of stacking them, one would have a reasonable expectation of success from the combination.

18. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fan (US D482374 S) and further in view of Zonca.

19. Fan discloses of an ice tray with compartments that are aligned vertically having closed bottoms and open tops, and have an increasing girth. Refer specifically to Title, Claim, Description, and Figures 1-5. Fan, however, is silent to an elliptically shaped wall with round corners, the length of the compartments as between one and five inches, and the widest cross-sectional girth as less than one inch as recited in claim 18 and the size of the open top and closed bottom as recited in claim 19.

20. Zonca teaches of a tray with lateral compartments for creating narrow pieces of small girthed ice articles for openings on portable beverage containers, with one or more overflow channels in the tray table to provide a path for self-leveling water (Abstract). In Figure 1 Zonca teaches that the lateral compartments are downwardly formed. Zonca discloses in Column 1 lines 45-49, that the tray compartments have a diameter or girth of less than 0.75 inches, two transverse dimensions, or the width and depth, of less than 0.75 inches. Zonca discloses of a top surface with an elevated rim, rising upwardly from the tray table (Column 2, lines 30-38 and Figure 1 &5), and a cavity or lateral compartment length of 1-8 inches (Column 2, line 55). On Column 3, lines 1-5 and in Figures 6 (22) and 9 (24) Zonca teaches of a tray with convexly countered, or rounded corners, or tapered ends which are in a semi-circle or cylindrical shape, to allow for easy removal.

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21. Regarding the length of the compartments as between one and five inches as recited in claim 18, the widest cross-sectional girth as less than one inch as recited in claim 18, and the size of the open top and closed bottom as recited in claim 19, it would have been obvious to one skilled in the art to include the dimensions (less than 0.75 inch girths and a length of 1-8 inches) as disclosed by Zonca in the ice tray as taught by Fan. One would have been motivated to do so in order to produce an ice cube that was able to adapt to many types of drinking containers (i.e. portable beverage containers, glasses, cups, ect.) Because both references deal with ice trays, one would have a reasonable expectation of success from the combination.

22. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fan and further in view of Zonca as applied to claims 18 and 19 above, and in view of Lalonde (US 4222547).

23. The difference between the reference and the claim is that the reference is silent to an overflow channel formed in an ice tray for providing a path for self-leveling water as recited in claim 20, a raised rim as recited in claim 20, and the vertical components as contoured as recited in claim 21.

24. Regarding the tray table as having a raised rim as recited in claim 20, it would have been obvious to one skilled in the art to include a raised rim as taught by Zonca in the ice tray as taught by Fan. One would have been motivated to do so because of the benefits of the raised rim; such as when transporting the freshly filled ice trays (i.e. liquid filled) the liquid would not spill off the tray and create slick conditions for the transporter

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of the trays. Because both references deal with ice trays, one would have a reasonable expectation of success from the combination.

25. Regarding an overflow channel formed in an ice tray for providing a path for self-leveling water as recited in claim 20, Lalonde teaches of an ice tray with notched channels (i.e. overflow channels) for providing a path for self-leveling water. Refer specifically to Abstract, Figure 1, and Column 3 lines 44-47. It would have been obvious to one skilled in the art at the time the invention was made to include overflow channels for providing a path for self-leveling water in view of Lalonde in the ice tray as disclosed by modified Fan. One would have been motivated to do so in order to gain the benefits of overflow channels for providing a path for self-leveling water, to assure equalization upon filling. Because both deal with ice trays, one would have a reasonable expectation of success from the combination.

26. Regarding an elliptically shaped wall with round corners as recited in claim 18 and the closed bottoms as contoured as recited in claim 21, it would have been obvious to one skilled in the art at the time the invention was made to include convexly countered bottoms and corners on the ice tray as taught by Fan in view of Zonca. One would have been motivated to do so in order to allow easy removal of the ice from the trays as taught by Zonca. Because both references deal with ice trays, one would have a reasonable expectation of success from the combination.

Response to Arguments

27. Applicant's arguments see Page 1, filed 19 December 2005, with respect to the rejection(s) of claim(s) 14 and 15 under 35 U.S.C. 102(e) and 16 and 17 under 35 U.S.C. 103(a) have been fully considered and are persuasive *only* in regards to an overflow channel as recited in claim 14. Therefore, the rejection of claim 14 has been withdrawn. The rejections of claims 15-17 have also been withdrawn only because they are dependant upon the rejection of claim 14. However, upon further consideration, a new ground(s) of rejection is made as stated above.

28. Applicant's arguments see Page 1, filed 19 December 2005, with respect to the rejection(s) of claim(s) 19 and 20 under 35 U.S.C. 102(e) have been fully considered and are persuasive *only* in regards to their dependency on claim 18. Therefore, the rejection of claims 19 and 20 have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as stated above.

29. Applicant's arguments see Page 2, filed 19 December 2005, with respect to the rejection(s) of claim(s) 18 and 21 under 35 U.S.C. 103(a) have been fully considered and *are* persuasive *only* in regards to their dependency on claims 12-15. Therefore, the rejection of claims 18 and 21 have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as stated above.

30. Applicant's arguments filed 19 December 2005, with respect to claims 12 and 13 have been fully considered but they are not persuasive.

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31. Regarding the rejection of claims 12 and 13 and Zonca as teaching a plurality of lateral compartments, applicant is again directed to Abstract and Figure 1, specifically parts 12 and 18. Zonca teaches in the Abstract of a tray that forms narrow ice *pieces* and has one *or more narrow cavities* for receiving water. Zonca teaches in Figure 1 (12) of multiple lateral compartments.

32. Regarding claim 16 and chute as integrally formed of said tray at an orientation parallel to said length of said lateral compartments applicant is directed to Copeman Abstract, Column 3 lines 44-46, and Figures 1-5. Copeman teaches that the chute is an *integral or essential part of the complete ice tray design* (See Dictionary Definition provided). Furthermore, Copeman teaches that the chute is in a parallel orientation with the lateral compartments (Figures 1-5), otherwise the ice would not be able to fall into the chute. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the concept of ejecting ice cubes) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

33. Regarding claim 17 and the different raised heights as found in the drawings of Asenbauer, applicant is reminded to look at Figures 1 and 2, specifically 30, 44, and 12. Asenbauer teaches in these figures a first raised height (12, a first raised height which extends along the rim 30), and a second raised height (44 which leads to an elevated rim with the first raised height 12 and 30). Applicant is also reminded that since Zonca

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teaches of a container (that contains ice) for stacking and since Asenbauer teaches of a container for staking, therefore one would have a reasonable expectation of success from the combination since both are directed to stackable containers and Asenbauer teaches the particular structure that allows a *plurality* of staked containers.

34. Regarding claims 18 and 21 and fan as discloses of an ice tray with compartments that are aligned vertically and have an increasing girth, applicant is reminded to specifically look at the claim which recites "an ice tray" and Figure 5 in which an compartments that are aligned vertically and have an increasing girth are taught.

Conclusion

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.


36. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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37. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Handwritten signature of Kelly Mahafkey, dated 2/8/02.

Kelly Mahafkey
Examiner
Art Unit 1761

Handwritten signature of SPB.
SPB 1761